

**CALIFORNIA ENERGY COMMISSION**

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STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:	)	Docket No. 00-AFC-13
	)	
Application For Certification of the	)	ENERGY COMMISSION STAFF'S
AES HUNTINGTON BEACH GENERATING	)	BRIEF IN RESPONSE TO APRIL
STATION RETOOL PROJECT.	)	10, 2001 COMMITTEE ORDER
_____	)	FOR BRIEFS

On April 10, 2001, the Committee issued an order that the Energy Commission Chief Counsel's Office, and other parties at their option, respond to the legal arguments (pp. 10 - 14) in the Comments of the City of Huntington Beach. The City argues that the Energy Commission may impose a Condition of Certification requiring the Applicant to have an electricity sales contract with the Department of Water Resources as a condition for operation of the Unit 3 and 4 Retool Project or as a condition for expedited certification pursuant to the Governor's Executive Order(s).

We find no distinction between the imposition of the condition on general grounds or as a condition of an expedited approval. In either case, the Commission would be using its regulatory authority to achieve the goal of committing the power to California to the exclusion of other states; the key question is whether the Energy Commission is permitted to do so under the interstate commerce clause of the United States Constitution. We've reviewed the City of Huntington Beach's arguments and find them to be largely untested in the courts and the outcome of litigation over the City's proposed condition unpredictable.

AES has consistently stated its intention that the power generated by Units 3 and 4 would remain in and benefit California. Rather than focus on a legal debate or invite litigation over whether the Energy Commission could command AES to make that commitment, staff has for some time worked to bring to a successful conclusion the negotiation of a power sales contract between the California Department of Water Resources ("DWR") and AES Huntington Beach. We have been in contact with DWR to track the status of negotiations. During recent weeks, it appeared that our direct participation in discussions could facilitate the conclusion of negotiations. We have arranged and participated in a conference call and a face to face meeting among AES, DWR and CEC staff to attempt to address the remaining issues.

In any event, a condition requiring entry into a DWR contract may have unwanted practical consequences in the energy emergency we face. If the start of construction were delayed until an agreement was reached, any delay in reaching agreement would delay the availability of power from the units during the crucial summer peak season.

As this is written, staff is continuing to monitor and encourage the completion of a DWR contract negotiate a mutually satisfactory solution. We will report the outcome at the earliest possible opportunity.

DATED: April 12, 2001

Respectfully submitted,

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PAUL A. KRAMER JR  
Staff Counsel